



**ARIZONA DEPARTMENT OF ADMINISTRATION**  
Enterprise Procurement Services

**Protest & Procurement Officer's Decision**  
**Policy and Procedure #7 v. 2**

For

State Governmental Units

This is not intended or represented to be the official record of laws and regulations covered under Chapter 23, Article 9 and applicable administrative rules pertaining to protests and procurement officer's decisions. In the event of a discrepancy between these procedures and applicable statute and rule, statute and rule shall prevail.

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## **I. Introduction:**

A protest is a written objection submitted by an interested party to a solicitation, proposed award or award of a contract submitted via mail, hand delivery, facsimile, e-mail or e-mail attachment. Protests should not be viewed as vendor complaints but rather one step in an administrative process designed to ensure the fair and equitable treatment of all persons who deal with the procurement process of the State. The purpose of this policy and procedure is to standardize how State governmental units are to respond to protests.

The word “protest” does not have to be present in a document for it to be considered a valid protest. Issue recognition is an important part of determining whether a document should be treated as a protest. State governmental unit purchasing personnel should look at factors such as:

- Does the document challenge a solicitation or award determination?
- Does the document suggest errors were made by the State or responsible State governmental unit?
- Does the document seek a remedy?

If any of these are present it should be treated as a protest. Supervisors, managers, Chief Procurement Officer's (CPO's) or other officials designated by the State governmental unit should be consulted in cases where it may be unclear if a document should be treated as a protest.

It is the State's responsibility, under chapter 23, article 9, and administrative rules A.A.C. R2-7-902 through R2-7-908 of the Arizona Procurement Code (APC), to formally respond to protests. These are known as Procurement Officer's Decisions.

## **II. Authority:**

Chapter 23, article 9 and administrative rules A.A.C. R2-7-902 through R2-7-908 of the Arizona Procurement Code

## **III. Definitions:**

- 1 APC: Arizona Procurement Code.
- 2 CPO: Chief Procurement Officer
- 3 Interested party: An actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
- 4 Procurement Officer: An individual duly authorized to enter into and administer contracts within the limits of their authority.
- 5 Protest: A written objection submitted by an interested party to a solicitation, proposed award or award of a contract.
- 6 State Governmental Unit: Any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State subject to the provisions of the Arizona Procurement Code.

#### **IV. Responsibilities:**

The Procurement Officer, CPO or other official designated by the CPO for the State governmental unit issuing the solicitation or awarding the contract being protested shall issue the Procurement Officer's Decision.

#### **V. Procedures:**

Procurement Officer's Decisions may form the foundation for administrative hearing arguments and even litigation, and will be read by lawyers, hearing officer's and others who are not familiar with procurement or the technical requirements. With this in mind responses should be clean, clear,

complete and concise and the protester should be treated with courtesy and respect. See attachment No. 1 for the format and sample language that should be followed when responding to a protest.

## **VI. Established Timeframes**

Chapter 23, article 9 of the APC establishes timeframes for the filing of a protest and the issuing of the Procurement Officer's decision. These are computed as follows:

- A day is a calendar day;
- Day one is the day after filing;
- The last day is calculated as: Day one plus the total number of days specified by rule (i.e. 14 days for completing the Procurement Officer's Decision).
  - Should the last day fall on a Saturday, Sunday or State observed holiday then the last day shall be the next day that is not a Saturday, Sunday or State observed holiday.

## **VII. Untimely or Late Protests**

A.A.C. R2-7-904 establishes the following timeframes for filing protests:

- Protests of solicitations shall be filed before the solicitation opening date.
- Protests of proposed awards or awards of contracts shall be filed within ten days after the protester knew or should have known the basis of the protest, whichever is earlier.

Late or "untimely" Protests shall not be accepted unless the Protestor shows "good cause" (R2-7-904, paragraph D. and *Arizona's Towing Professionals, Inc. dba Shamrock Towing v State of Arizona, Department of Public Safety* 287 Ariz. Adv. Rep. 46) Just what is "good cause" is up to the Procurement Officer. Considerations may range from issues such as;

- Whether the delay is short (i.e. 1 or 2 days as opposed to 1 or 2 weeks);
- Whether the Protestant should have known he was late and ignored the rule;
- Whether the Protestant has stated a plausible reason for their protest being untimely; or

- The seriousness of the issues in the protest and the harm to the Protestant and the public if the issues are not addressed.

A statement by the Procurement Officer that a protest is either a) untimely, but based on “good cause” is being considered, or is b) untimely and therefore denied shall be contained in the discussion section of the Procurement Officer’s Decision.

The Procurement Officer should still address issues contained in an untimely protest. It is not recommended to just make the statement that the protest is untimely and therefore dismissed.

**Example a):** ABC Company filed its protest more than 10 days after it knew or should have known the basis of its protest but based on the following “good cause” the protest shall be considered.

**Example b):** ABC Company filed its protest more than 10 days after it knew or should have known the basis of its protest and therefore the protest is denied. Although the protest is denied as untimely, as a courtesy the following discussions are provided.

#### **VIII. Receipt, Routing and Filing of Protests and Procurement Officers Decisions:**

State governmental units shall implement and maintain internal policies and procedures for the receipt, routing, mailing and filing of protests and Procurement Officer’s Decisions in accordance with all prescribed administrative rules.

## ATTACHMENT NO.1 FORMAT & SAMPLE LANGUAGE FOR PROCUREMENT OFFICERS DECISIONS.

### DOCUMENT TITLE

*This section identifies the responsible State governmental unit, the Issue (protest of a solicitation or contract award), Protestants name, solicitation or contract number, responsible party and authority.*

#### Example:

STATE GOVERNMENTAL UNIT'S NAME

PROTEST OF (SOLICITATION) or (AWARD)	) PROCUREMENT OFFICER'S
(PROTESTANT'S NAME)	) DECISION
(SOLICITATION) or (CONTRACT) NUMBER	) A.A.C R2-7-907

### I. INTRODUCTION:

*This section provides the opening statement identifying the Protestant, the office, citation of applicable rule/law and a statement that either denies or sustains the protest.*

**Example:** The ABC Company filed a protest with the XYZ Office pursuant to Arizona Administrative Code (A.A.C.) R2-7-903 on (date). The Procurement Officer sustains “agrees” or denies “disagrees” the protest for the reasons stated below:

### II. FACTS

*This section should list the relevant and material facts and events concerning the solicitation and any resultant contract award, such as the solicitation issue date, number of solicitations sent, pre-proposal or pre-bid conferences held, amendments issued, etc. Facts should be concise and to the*

*point and be one sentence in length (if possible). The purpose is to provide a chronological record of events for the reader or potential readers of the decision.*

**Example:**

- 1 (Date): Notification of solicitation (IFB) or (RFP) number (123) was sent to (Number) prospective offerors.
- 2 (Date): A pre-proposal or pre-bid conference was held at (time and location).
- 3 (Date): Solicitation amendment No 1 was issued.
- 4 (Date): Offers were received.
- 5 (Date): Offers were evaluated by the Technical Evaluation Committee.
- 6 (Date); The Contract was awarded by the Procurement Officer to XYZ Company.
- 7 (Date): ABC Company filed its protest.

**III. DISCUSSIONS:**

*This section shall describe the areas of controversy or dispute between the Protestant and the State.* The Procurement Officer shall address each issue identified by the Protestant with discussions and conclusions. Issues may be combined if the discussion and conclusion is the same. Special care should be taken to recognize other issues that may be disguised in the Protest. Issue recognition is an important part of the Procurement Officer's Decision as an issue cannot be argued if it is not understood or recognized.

Once identified, each issue or combination of issues should be briefly re-stated to make it clear to the reader what issue is about to be discussed. Re-stated issues should commence with: The ABC Company (argues, claims, alleges, maintains, etc.) followed by the re-stated issue.

The Procurement Officer should state and address the issue(s) as presented by the Protestant. Do not attempt to clarify or interpret vague or poorly written complaints or assume intent. Instead state that the complaint is vague or confusing.

Once addressed, each issue should be followed with discussions and conclusions by the Procurement Officer. Discussions should state facts, legal citations and conclusions clearly and concisely. Conclusions should provide a logical explanation as to why either the Protestant is correct (issue is sustained) or Procurement Officer is correct (issue is denied).

Discussion points and conclusions should:

- Be brief and to the point (word efficiency is key);
- Focus on the issue at hand (straying may result in additional arguments being brought by the Protestant);
- Be stated in simple terms;
- Be unemotional (a defensive, argumentative or curt tone may affect the credibility of the discussion and possibly taint the State's position of being fair and objective); and
- Cite applicable law or rule.

- Writing Tips:

- Outline the decision to organize issues before drafting the decision;
- Use short declarative sentences and present the facts in a straightforward manner. "The proposal arrived at 3:33 PM, 33 minutes late and is untimely";
- Avoid legal jargon and complex words;
- Define acronyms when first used. "Arizona Administrative Code (A.A.C.)";



- Use precise references to law. Avoid vague or general references to the law or "Arizona Procurement Code";
- Avoid unnecessary adverbs like "clearly", "simply" or "obviously";
- Avoid emotional and offensive words;
- Be careful when using adjectives. Use the protester's name or "protester" instead of "they" and avoid using "you";
- Do not avoid addressing issues. Admit procurement errors;
- Spell-check the decision carefully;
- Invite someone else to read or edit the decision for readability, grammar and logic.

Successful discussions and conclusions are those which are well thought out, concise, stated in objective neutral tones, have sound basis of fact or law and may be clearly understood by a casual reader (keep in mind that the Procurement Officers Decision may be read and interpreted by individuals with little or no procurement knowledge.)

**Example:** ABC Company argues that, *"The solicitation did not include procedures for protesting either the solicitation or the ultimate award."*

This is not correct. As with all solicitations issued by the State, the Uniform Instructions to Offerors section, paragraph 7, of solicitation number 123 describes the procedures for filing protests.

#### IV. DECISION:

*This section states the decision by the State along with identifying available procedural actions that may be taken by the Protestant.*

**Example:** Based on the reasons stated above the protest is hereby (sustained) or (denied). The Protestant may appeal this decision to the Director of the Department of Administration (list the Director's office's complete address including suite number) within five calendar days of receipt of

this decision. A copy of any appeal should be sent directly to the procurement officer. Any appeal must be made in accordance with A.A.C. R2-7-909.

Effective this \_\_\_\_\_ Day of (month), (Year)

John O. Adler, CPO



State Procurement Administrator

December 14, 2005